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May 16, 2024

VIA ECF

United States District Court
Eastern District of New York
Attn: Hon. Pamela K. Chen, U.S.D.J.
225 Cadman Plaza East
Courtroom 4F North
Brooklyn, NY 11201-1804

Re: IME WatchDog, Inc. v. Gelardi, *et al.*
Case No.: 1:22-cv-1032 (PKC) (JRC)
MLLG File No.: 25-2022

Dear Judge Chen:

This office represents the Plaintiff IME WatchDog, Inc. (“Plaintiff”) in the above-referenced case. Plaintiff submits this letter objecting to Defendants’ anticipated attempt to submit declarations at the May 29, 2024 in lieu of live testimony.

In their May 15, 2024 letter to the court identifying their witnesses (ECF Docket Entry 329), Defendants state they may submit declarations by unidentified representatives of Subin Associates, LLP, Bergman, Bergman, Fields & Lamonsoff, Ginarte Gonzalez & Winograd LLP, and Zemsky & Salomon P.C. Defendants also state they will rely on a previously submitted declaration from from Anthony Infurna.

Defendants provide no legal authority that permits them to submit declarations in lieu of having these witnesses testify at the hearing because no authority exists. Indeed, Fed. R. Civ. Prov. 43(a) requires a witnesses’ testimony to be taken in open court (or through remote means under certain circumstances). See Fed. R. Civ. Prov. 43(a). The submission of declarations would deprive Plaintiff of the opportunity to cross-examine each of these witnesses. See Okeke v. N.Y. & Presbyterian Hosp., 2017 U.S. Dist. LEXIS 87449 (S.D.N.Y. June 6, 2017) (“No one will testify by affidavit at the upcoming trial, because affidavits cannot be cross-examined.”)

Moreover, Defendants should be directed to identify the names of the witnesses who will be called at the hearing rather than providing merely the names of the law firms for which each witness is employed.

Therefore, Plaintiff respectfully requests an order (i) precluding Defendants from utilizing declarations in lieu of live testimony; and (ii) requiring Defendants to provide the names of the witnesses who will be called at the hearing rather than providing merely the name of the law firm for which each witness is employed.

Respectfully submitted,

MILMAN LABUDA LAW GROUP PLLC

/s/ Jamie S. Felsen, Esq.

SAGE LEGAL LLC

/s/ Emanuel Kataev, Esq.

cc: All Counsel of Record